



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 01, 2022

IN THE MATTER OF:

Appeal Board No. 624830

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective February 12, 2022, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to February 12, 2022, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant and on behalf of the employer. By decision filed July 19, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked in New York City's Office of Child Support Services as a principal administrative associate until October 29, 2021. She worked in an office and interacted with a staff of five others. In October 2021, the employer informed the claimant that she was required to receive the COVID-19 vaccination pursuant to an order from the New York City Commissioner of Health with a deadline of October 29, 2021. The claimant was aware that taking the vaccine was required for her continued employment. The

claimant refused to become vaccinated because she believed it interfered with her religious beliefs. The claimant does not attend church and is not involved with any religious institution.

On October 29, 2021, the employer placed the claimant on leave without pay because she did not receive the COVID-19 vaccine by the deadline. After she was placed on leave, she applied for a religious exemption which was later denied.

OPINION: The credible evidence establishes that the claimant was separated from her employment on October 29, 2021 when she chose to leave her job and be placed on leave without pay, rather than comply with the New York City and employer mandate to receive the COVID-19 vaccination. This constitutes a voluntary separation from employment for unemployment insurance purposes.

The employer's requirement for the claimant to be vaccinated was pursuant to a New York City Commissioner of Health mandate. This mandate, in place to protect health and safety, was reasonable. As noted in another Appeal Board decision regarding a claimant's refusal to be vaccinated under such mandates, "The Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease." Appeal Board No. 620438, citing to (see *Matter of Garcia v. New York City Dept. of Health & Mental Hygiene*, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; *Matter of C.F. v. New York City Dept of Health & Mental Hygiene*, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and *Matter of New York City Mun. Labor Comm. v. City of New York*, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts." Even in the absence of the Commissioner's mandate, we find that the employer's requirement to become vaccinated was reasonable (See Appeal Board No. 621758).

The claimant's contention that she had good cause to leave her job rather than comply with the mandate and requirement because it interfered with her

religious beliefs is not persuasive. The Supreme Court has held that such right is subject to a compelling interest test (*Sherbert v. Verner*, 374 U.S. 398 [1963]). In *Sherbert*, the Supreme Court held that unemployment benefits could not be denied to a claimant for refusing to accept work that required him to work on Saturday in violation of his religious beliefs unless such action is justified by a compelling governmental interest (emphasis added). In the case at hand, the employer's policy was intended to further a compelling governmental interest to combat the virus and protect health and safety.

The Supreme Court of the United States has also held that, "... an individual's religious beliefs [do

not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate" (see *Employment Div. v. Smith*, 494 US 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice. The Second Circuit of the United States Court of Appeals found that the Vaccine Mandate at issue here is neutral, is generally applicable, and was a reasonable exercise of the State's power to protect the public health. *Kane v. De Blasio*, 19 F. 4th 152, 2021 U.S. App. LEXIS 35102 (2d Cir., 2021). Thus, the claimant's religious beliefs do not take precedence over the mandate or the employer's requirement.

Therefore, we find that the claimant's choice not to comply with the vaccine mandate and employer's requirement was not only voluntary, as she could have preserved her employment by complying, but was without good cause. Accordingly, we conclude that the claimant was separated from her employment under disqualifying circumstances. As her last day of work was October 29, 2021, the effective date of the disqualification should be modified to October 30, 2021.

In light of our ruling that the claimant voluntarily separated from her employment, the question of whether she lost her employment through misconduct, is rendered academic.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination disqualifying the claimant from receiving benefits,

effective February 12, 2020, on the basis that the claimant voluntarily separated from employment without good cause is modified to be effective October 30, 2021, and, as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER